

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
NICK GORDON, :
:
Plaintiff, : 15-CV-02439 (CBA)
:
v. : 225 Cadman Plaza East
:
CITY OF NEW YORK, *et al.*, : Brooklyn, New York
:
Defendants. : June 26, 2017
:
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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE VERA M. SCANLON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

The Plaintiff: NICK GORDON, *Pro Se*
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Flushing, New York 11385

For the City of New York: ANGHARAD K. WILSON, ESQ.
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For the Defendants: H. JONATHAN RUBINSTEIN, ESQ.
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Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

1 (Proceedings began 12:34 p.m.)

2 THE COURT: All right. This case is *Gordon v. City*
3 *of New York*, 15-CV-2439. Let's start with everyone's
4 appearance, so first plaintiff.

5 MR. GORDON: Nicholas Gordon, *pro se*.

6 THE COURT: Okay. And for the City defendants.

7 MR. WILSON: Angharad Wilson.

8 THE COURT: And for the other defendants.

9 MR. RUBINSTEIN: H. Jonathan Rubinstein of The
10 Feinsilver Law Group, P.C., Your Honor.

11 THE COURT: All right. This case has been around
12 for a while. Where are you all in terms of getting discovery
13 completed and moving towards a conclusion here?

14 MS. WILSON: Oh, I guess --

15 THE COURT: City defendants, sure.

16 MS. WILSON: That probably goes to me. Well, we --
17 so I believe that at the last conference which was on
18 February 15th plaintiff was given a deadline of March 27 to
19 find and retain new counsel. We emailed him on April 3, 2017,
20 asking him to advise us of his new counsel if we found any.
21 On April 7th he replied saying that he had not found any new
22 counsel but that he was meeting with someone in the near
23 future at that point. So we served -- we served discovery
24 demands on May 4th, 2017, and then -- and also served
25 plaintiff with a notice of deposition for May 18th. That

1 deposition was cancelled on May 16th. I did not speak to
2 Mr. Gordon, but my co-counsel advises me that Mr. Gordon
3 evidently had oral surgery on that date or that's what he told
4 Mr. Brocker.

5 And then we resent a new notice of deposition on
6 June 15th for this July 17th by mail and email. And our cover
7 letter also noted the fact that we had not yet received any
8 responses to the written discovery and advised plaintiff that
9 if we did not receive such responses by July 5th we would move
10 the court to compel him for sanctions.

11 THE COURT: All right. How about the other
12 defendants and like Mr. Gordon?

13 MR. RUBINSTEIN: My recollection is I'd gotten my
14 discovery responses from adversary counsel.

15 THE COURT: Um-hum.

16 MR. RUBINSTEIN: Before he [indiscernible] the case
17 but we also want to take Mr. Gordon's deposition.

18 THE COURT: You want to do it in tandem with the
19 City on 7/17 date?

20 MR. RUBINSTEIN: Yes, Your Honor.

21 THE COURT: All right. Mr. Gordon, what's going on?

22 MR. GORDON: I went through several attorneys. I
23 have one gentleman -- a lot of attorneys, like you said, that
24 if you -- the last time we were here that there's only a few
25 sure -- and the type of attorneys that handle this type of

1 cases. So this attorney is -- name is T. J. Banks. He
2 wanted -- first he was going through -- doing a trial, then he
3 wanted to go through all the documents. I meet with him on
4 this Friday. I think he's the one that I'm going to -- I --
5 put it this way, I think he's the one that's -- I'm going to
6 choose to be my attorney because he was a DA at one point for
7 20-some years, so he knows the system pretty well to a certain
8 degree. And also he's a real estate -- because a lot of --
9 this is something to do with real estate and also what
10 happened to me with the situation.

11 So again, they want my deposition said on July 15th.
12 Is that correct?

13 THE COURT: 17.

14 MR. GORDON: Oh, 17? I would -- I wouldn't know
15 till Friday if he's available for that date. I think maybe he
16 might be. I'm not sure. But again, he has to first present
17 himself on the system and everything else with that.

18 So is it possible maybe to get like a -- like the 15
19 days' extension after that if possible because I don't want to
20 put him in a spot because then he's not ready and then it just
21 confuses everything.

22 THE COURT: So that first point is apparently from
23 May you have demands from the City for documents. Did you get
24 those?

25 MR. GORDON: They did send me them, yes, she did.

1 THE COURT: So is there a reason you didn't respond
2 to them?

3 MR. GORDON: Two things. Again, I -- going back to
4 the attorney, was going to give them the documents and then
5 because again I'm *pro se* I've never did this before, so that's
6 the reason why I didn't really send it to him. I figured
7 maybe the attorney will handle it and, you know, move forward
8 on it but it didn't work out that way. So I was just
9 wondering, you know, that's exactly what happened.

10 A lot of attorneys I believe were not -- they don't
11 like taking a case that's -- another attorney had, which is
12 really -- you know, I never, you know, experienced that but
13 that's how it is in this situation.

14 THE COURT: So you're meeting with Mr. Banks. Do
15 you have any kind of commitment from him or he's going to let
16 you know what his decision is about whether he wants the case
17 or whether you --

18 MR. GORDON: No, he --

19 THE COURT: -- [indiscernible] --

20 MR. GORDON: I'm sorry to interrupt. I'm about 100
21 percent sure I'm going to have him.

22 THE COURT: Um-hum.

23 MR. GORDON: I just wanted to go through the
24 documents. He went through the system already. He wanted --
25 he was going through what happened with the real estate

1 transaction at that time, but he's really the only guy at this
2 point that I'm 100 percent sure that I'm going to have him on
3 board.

4 THE COURT: Right. But there's the other -- does he
5 want to take the case?

6 MR. GORDON: Yes, he does.

7 THE COURT: Okay.

8 MR. GORDON: Yes.

9 THE COURT: Okay. All right. So I think it makes
10 sense to set some new interim deadlines that would apply
11 either to you or to Mr. Banks, whoever is handling the case.
12 It's just -- and so there are a couple steps. There's
13 responding to the demands that you -- that you received which
14 you should pass on to your lawyer and providing the documents
15 for the interrogatories as well.

16 MS. WILSON: Yes, there were, Your Honor.

17 THE COURT: So answering the statement or --
18 answering the questions with whatever your sworn statement is
19 to those interrogatories. And then, you know, counsel most
20 often wants the documents before doing the deposition.

21 MR. GORDON: Right.

22 THE COURT: So assuming he's starting the end of the
23 week, next week, something like that, give you till the 21st
24 to respond to their document requests and interrogatories.

25 MS. WILSON: And Your Honor?

1 THE COURT: Um-hum.

2 MS. WILSON: We would also ask for an order that
3 plaintiff has waived all his objections and his responses.

4 THE COURT: I'm not going to do that. I don't know
5 what his -- don't know what the question were, don't know what
6 the objections might be, and your lawyer should know they need
7 to be very narrowly tailored objections if there are any. But
8 should provide the documents and their responses by July 21st
9 and if you're asking for documents he should issue those by --
10 well, I guess, Mister -- I'm sorry. The previous counsel
11 already asked for --

12 MS. WILSON: He did in fact --

13 THE COURT: -- information and you responded?

14 MS. WILSON: -- and he did actually -- he did
15 actually request them prior to the stay of discovery that
16 Judge Amon ordered during the pendency of the motion to
17 dismiss in this case, so --

18 THE COURT: And they were answered? You did answer?

19 MS. WILSON: We've already responded.

20 THE COURT: Okay.

21 MR. GORDON: Probably have it.

22 THE COURT: So you have the file. You should pass
23 it on to him.

24 And then with your deposition I'll just -- it should
25 happen pretty expeditiously. I don't know what anyone's

1 schedule is. I would say --

2 MR. RUBINSTEIN: Your Honor, I've got a very
3 difficult --

4 THE COURT: -- this is a month after the
5 documents --

6 MR. RUBINSTEIN: I'm sorry. I have a very difficult
7 August. I have a two-week arbitration scheduled to begin in
8 the second week of the month and I'm hoping to get away the
9 last week of the month.

10 THE COURT: So does that mean you want to do it the
11 first week of the month?

12 MR. RUBINSTEIN: That's fine with me, Your Honor.

13 THE COURT: All right.

14 MR. RUBINSTEIN: I know I also have a doctor's
15 appointment on August 2nd which I can't miss.

16 THE COURT: Okay. Does the first week work for you?

17 MS. WILSON: I believe so, Your Honor. I would also
18 like to just briefly raise the point that we -- that we
19 believe the plaintiff should still consider withdrawing his
20 case against the City of New York.

21 THE COURT: Um-hum.

22 MS. WILSON: Most of his claims are barred by a
23 global release that he signed in the prior settlement with the
24 City of New York and we don't believe that there is any --
25 that there are any damages attributable to the motions

1 prosecution claim given that he was prosecuted on a
2 superseding complaint that was exclusively sworn to by the
3 complaining witnesses, not by any of the -- any of the
4 individual defendants from the City. And there's no Monell
5 claim.

6 THE COURT: All right. We've kind of went over this
7 before. Your lawyer should be aware of it. And the City is
8 raising the point I think is unstated, but what will happen in
9 an objection is if the claims are dismissed, you know, at the
10 next motion stage they're going to move for costs and maybe
11 sanctions.

12 MS. WILSON: I'm certain that's correct.

13 THE COURT: So --

14 MS. WILSON: I mean, at least for costs.

15 THE COURT: If there's no legal basis, which
16 obviously is the conversation you're going to have with your
17 lawyer with the claims against the City, not against the other
18 defendants, they just want to make clear their position.

19 MR. RUBINSTEIN: Your Honor, I would say that my
20 clients feel the same way about the claims raised against them
21 for the matters that -- for the reasons we discussed at length
22 in the past.

23 MR. GORDON: Can I speak?

24 THE COURT: Sure.

25 MR. GORDON: Going back it's really not -- nothing

1 to do with any money issue here. It's really the principle.
2 And I want to be clear the last time because a release was
3 signed since you've brought it up I was in lock down for no
4 reason and the reason was I didn't want to settle. Even the
5 judge called me when I was in Greece [ph.] and I told him it's
6 not the principle. He says, "I agree. It's unbelievable."
7 So I did it as a courtesy. But it's not the point of the
8 money and I just want to be clear with that. And the release
9 had nothing to do what happened here. The key point I want to
10 say to you is that the police had an obligation. You can't
11 just go by one or two people's opinion that somebody did this
12 and lock them up. You should investigate what really
13 happened, especially if the person wasn't the owner of the
14 building at that time and there were trespass at the building.
15 So -- and -- oh, the key point to get back to what
16 you just said, one thing that I keep in my head which has kind
17 of really bothered me for all the time, the lieutenant or --
18 came to me and says, "I'm the -- I'm the one who called the
19 cops. I'm the one who, you know, made the phone call to the
20 cops." And he came to me, "Have you been locked up before?"
21 and he says to me, "Yeah, I got locked up for cops
22 [indiscernible] false arrest and I have a court case at that
23 time." So like making complaints against cops. And then the
24 detective went inside, talked to these guys a couple of times.
25 And then he comes back. He says, "Turn around, going to lock

1 you up."

2 Now, you should do your diligence. You just can't
3 lock people up. And do their job and say because somebody
4 says this it's okay. "I'm going to call the cops"; that's my
5 whole problem here. And it's just doing your job is the key
6 here -- and that's a lot of lawyers -- this T. J. said I have
7 a point. You've just got to do your diligence before
8 investigate. You know, get into it. See how -- who are these
9 guys? How did they get in here? I didn't touch them. And
10 they just roll around the floor and they put dust [ph.] on
11 them said I touched them and --

12 THE COURT: Okay.

13 MR. GORDON: -- then [indiscernible] --

14 THE COURT: But we already went through it in the
15 settlement effort --

16 MR. GORDON: Yeah, I'm sorry.

17 THE COURT: -- but if I recollect correctly the
18 City's point or the City defendants is two-fold. One at some
19 point you signed a document that's a release so you've said
20 you're not going to bring these claims. Do you have a copy
21 with you or --

22 MS. WILSON: Well, I'm sorry I don't.

23 THE COURT: Okay. So that's not a question of
24 anything about the merits. That's a question about what other
25 kind of agreement you've made with regard to going ahead with

1 claims against defendants.

2 MR. GORDON: Right, but the release -- my prior
3 attorney, he was aware of that. He said this has nothing to
4 do -- that has nothing to do with this case. That's what he
5 said to me. Anyway, we don't want to get into it. We'll find
6 out with deposition we'll get into all that.

7 THE COURT: But it's not a question, I don't think,
8 of a deposition. The question is, what does the document says
9 and it's essentially a contract and the City is offering the
10 position that that contract covers this case so --

11 MR. GORDON: What's --

12 THE COURT: -- they're raising the point.

13 And the other point that was made, which I -- you
14 know, we've talked about this many times and this is really
15 just to remind you is you may not like the law. I hear it in
16 many cases. People think it's unfair that the police can make
17 a decision and, you know, what you're describing is doing your
18 job or doing due diligence, but the law generally says it's
19 reasonable. There are some exceptions, but generally it's
20 reasonable for the police to rely on the complaining witnesses
21 or people who claim to be victims because it's not -- like
22 police are not out in the street being, as they say, judge and
23 jury. They're there to do many jobs, but essentially on this,
24 you know, do the basic investigation, decide if someone should
25 be arrested, start the process, and then the DA takes over and

1 the decisions are made based on, you know, much more involved
2 investigations.

3 And so, you know, that the police are responsible
4 particularly for an arrest when there's a complaining
5 witnesses or complaining victims, it's not the law. And so
6 that's the point that the City's lawyer is making that that
7 happened here. You know --

8 MR. GORDON: Right.

9 THE COURT: -- I -- you know, we've talked a lot
10 about it in the settlement discussions --

11 MR. GORDON: Right.

12 THE COURT: -- about whether it was reasonable,
13 whether the people who were complaining were thinking it,
14 whether they -- you know, you called and how did you end up
15 being the person arrested, but --

16 MR. GORDON: And there were other witnesses
17 [indiscernible].

18 THE COURT: But the point is --

19 MR. GORDON: Anyway.

20 THE COURT: -- only that what happens in the street
21 or in the building right at the event, you know, is a very
22 limited picture of all of the pieces. But the police are not
23 asked to do on the scene, on the -- like a, you know, super
24 quick, figure the whole case out. They are allowed to work
25 with limited information and if people are willing to, you

1 know, report to the police that certain things happened that
2 would be unlawful and stand by that, at least before the
3 police and the police are entitled to rely on it, you know,
4 and that's why obviously you have these other folks saying
5 that they should be involved in it because they did something
6 wrong.

7 But, you know, there's a little bit of an
8 inconsistency. It raised the question, did the various
9 defendants cooperate. But another view, one of many here, is
10 that the police relied on the defendants.

11 MR. GORDON: Your Honor, you're 100 percent right on
12 that. But the -- you know, as [indiscernible] would say, the
13 lieutenant to me was biased because I told him I had another
14 case that I was arrested, false arrest. And that's the words
15 that's in my head. He said, "Oh, you like making
16 [indiscernible] cops." I said, "What do you mean?" And then
17 ten minutes later I'm turned around [indiscernible].

18 THE COURT: There's an important principle which is
19 when you're making a claim about false arrest and the fourth
20 amendment, if the police officer subjectively for whatever
21 reason doesn't like you subject -- you know, because whatever.

22 MR. GORDON: Correct.

23 THE COURT: You know, you're wearing a pink shirt,
24 you're --

25 MR. GORDON: Right.

1 THE COURT: You know, you're a Mets fan, whatever it
2 is. If the police officer has also an objectively reasonable
3 basis to make the arrest it doesn't matter about the
4 subjective side. So, you know, depending on how you're
5 framing it, but under the Fourth Amendment it doesn't matter.
6 So he could have said what he said -- I don't want to
7 [indiscernible] you know, with more facts there's not some
8 kind of argument to be made, but just so you understand the
9 general principles. So this is why from the City's
10 perspective you shouldn't continue to sue them.

11 And what they're saying is, at some point it's
12 absurd, ridiculous, unfair, whatever that they have to keep
13 litigating something when there's no -- either there's no
14 legal basis like the Fourth Amendment point or there's a
15 completely valid defense which they've now told you about that
16 you should deal with. That's their view. And I say absurd or
17 unfair because the point is at the extreme and, you know,
18 there's some law that would say -- I'm speaking colloquially,
19 but when you get to that, the outer limits, then it's
20 reasonable for the City to say, look, it cost us money. This
21 isn't fair. You should have to give them, you know, back the
22 money that they end up spending on this.

23 So, you know, this -- the point is you can't come
24 along a couple months from now and say, I didn't know that,
25 you know. That's their position.

1 MR. GORDON: I understand.

2 THE COURT: Not saying whether they're right or
3 wrong. I'm saying these are the arguments that are going to
4 be raised, so --

5 MR. GORDON: If we have no claim to them, we'll be
6 happy -- I'll be happy to --

7 THE COURT: Well --

8 MR. GORDON: -- take them off the case at that time,
9 but when I --

10 THE COURT: The point is sooner rather than later so
11 the City doesn't keep spending money. So, look, it's
12 something for you to talk about with your lawyer, for your
13 lawyer to look at the evidence, look at the documents
14 particularly about release, you know, and it really depends on
15 the various specific texts of the release. Sometimes they're
16 broadly drafted; sometimes they're narrowly drafted; sometimes
17 there's exceptions carved out. I don't know what this one
18 says.

19 MR. GORDON: But the release was signed when this
20 case was still -- just popped in, so I -- I'm -- if this case
21 was still on and the lease was signed, you in that middle --
22 so I think this -- that's what --

23 THE COURT: I don't know --

24 MR. GORDON: I don't know the whole deal -- I don't
25 have everything in front of me.

1 THE COURT: Do you know?

2 MS. WILSON: I believe that it was signed -- that
3 the release was signed after plaintiff's arrest and prior to
4 the conclusion of the criminal prosecution. But there was no
5 carveout for --

6 THE COURT: Okay.

7 MS. WILSON: -- this case.

8 THE COURT: So generally --

9 MS. WILSON: [Indiscernible] --

10 THE COURT: Go ahead.

11 MS. WILSON: I apologize. I believe that that's
12 also why plaintiff's original counsel never raised a claim of
13 false arrest in this matter. I think it's because of the
14 general release.

15 MR. RUBINSTEIN: Your Honor, I made a request for it
16 as part of my discovery and I have not seen the release. I
17 would like someone to produce a copy for me if that's
18 possible.

19 MS. WILSON: That would be no problem.

20 MR. RUBINSTEIN: Thank you.

21 THE COURT: Okay.

22 MR. RUBINSTEIN: Okay.

23 THE COURT: All right. Let's fill in a few more
24 dates. All right. So the responses for the document request
25 and the interrogatories are due by July 21st. So, look, if

1 Mr. Banks takes the case you should talk to him. He'll know
2 the dates. He can handle it. If not, you have to provide the
3 information. And just so you understand the path of this
4 could go down if you don't respond the City may, as counsel
5 has suggested, make a motion to compel. If you don't have a
6 good reason for not having responded, then you'd be ordered to
7 respond. And if you failed the order to respond then the
8 follow-up is to make a motion to dismiss the case because the
9 thought is each side should have that information that's
10 needed to pursue the case, so that's where that will go.

11 And then your deposition should be taken by --
12 during the week of July 31st, except for the 2nd. Counsel is
13 not available. And then from the defendant's side is there
14 any other discovery?

15 MS. WILSON: I don't believe so, Your Honor.

16 THE COURT: Okay. So, you know, you can give your
17 attorney until the end of September to finish the fact
18 discovery, so that's July -- I'm sorry, not July --
19 September 29th. So -- and then --

20 MR. RUBINSTEIN: Excuse me, Your Honor.

21 THE COURT: Um-hum.

22 MR. RUBINSTEIN: Based -- depending on how
23 Mr. Gordon testifies at his deposition I may want to depose
24 one or two of the other fact witnesses that you referenced.

25 THE COURT: Okay. We should get it scheduled for

1 September. I would say August 6th if you had a busy schedule.

2 All right. So then you have Judge Amon so you've
3 already done this before, but she wants a pre-motion
4 conference letter so that should be served by October 27th.
5 So basically defendants will say to the trial judge there are
6 legal reasons or maybe factual. I'm going to say legal
7 reasons why this should not go forward and they'll explain
8 that in a letter to the trial judge by October 27th. You or
9 your lawyer can respond. If for some reason that doesn't
10 happen, although I think it will in this case, you could do a
11 joint pretrial order by November 30th if you -- that's only if
12 there's no motion practice.

13 Do you understand? So basically the case
14 [indiscernible] they challenged it, some of the cases going
15 forward. There's supposed to be an exchange of information.
16 That's the period we're in now.

17 Then defendants -- sometimes the plaintiff, but in
18 this kind of case almost only the defendants do it, they say
19 the trial judge can deal with the case and dismiss the claims,
20 we'll see what happens. If for some reason that motion
21 doesn't happen, which would be highly unlikely here, you
22 should get ready for trial.

23 MR. GORDON: Okay.

24 THE COURT: But I think there will be motion
25 practice.

1 MR. GORDON: So all the things will be eligible
2 beyond the --

3 THE COURT: Yeah, they'll be in this order. So let
4 me just make sure. Is your address still the Bleeker Street
5 address?

6 MR. GORDON: Yeah, you can send it there.

7 THE COURT: Okay. All right. Are there other
8 issues?

9 MS. WILSON: None from the City, the defendant's
10 perspective.

11 MR. RUBINSTEIN: Not from the military defendants,
12 Your Honor.

13 THE COURT: Okay. So you'll get a copy in this
14 order, but you should really give it to Mr. Banks. He'll be
15 able to look it up but, you know, these deadlines would affect
16 his scheduling, too. All right. So there'll be a date
17 sometime in mid-September to just come back here, see where
18 you all are at, and talk about wrapping it up and what the
19 motion practice is going to be about. Okay. Thank you.

20 MR. GORDON: Thank you. I appreciate it.

21 THE COURT: Have a good summer. Bye.

22 (Proceedings concluded 1:00 p.m.)

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I certify that the foregoing is a court transcript
from an electronic sound recording of the proceedings in the
above-entitled matter.

A handwritten signature in cursive script, reading "Ruth Ann Hager".

Ruth Ann Hager, C.E.T.**D-641

Dated: July 19, 2017